

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 84 of 2007

Dated : 23rd December, 2009

**Coram : Hon'ble Ms. Justice Manju Goel, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

IN THE MATTER OF :-

National Hydroelectric Power Corporation Ltd.

(A Govt. of India Enterprise)
NHPC Office Complex, Sector-33,
Faridabad (Haryana) – 121 003

... Appellant(s)

Versus

- 1. The Chairman
Punjab State Electricity Board**
The Mall, Near Kali Badi Mandir,
Patiala – 1478 001
(Punjab)
- 2. The chairperson
Haryana Power Generation corp. Ltd.**
Haryana Civil Sectt.,
Chandigarh (Haryana)
- 3. The Chairman & Managing Director
Delhi Transco ltd.**
Shakti Sadan,
Rouse Avenue Kotla Road,
New Delhi – 110 002.

- 4. The Chairman**
Uttar Pradesh Power Corporation Ltd.
Shakti Bhavan,
14, Ashok Marg,
Lucknow – 226 001 (Uttar Pradesh)
- 5. The Managing Director**
Jaipur Vidyut Vitaran Nigam Ltd.
Vidyut Bhawan,
Janpath,
Jaipur – 302 005.
- 6. The Chairman**
Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (RRVPNL)
Jaipur Vidyut Vitaran Nigam Ltd. (JpVVNL)
Jodhpur Vidyut Vitaran Nigam Ltd. (JdVVNL)
Ajmer Vidyut Vitaran Nigam Ltd. (AVVNL)
Vidyut Bhavan, Janpath,
Jyoti Nagar,
Jaipur – 302 005 (Rajasthan)
- 7. Chairman-Cum-Managing Director**
Uttaranchal Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun – 248 001
(Uttarakhand)
- 8. The Managing Director**
Jodhpur Vidyut Vitaran Nigam Ltd.
New Power House,
Industrial Area,
Jodhpur – 342 003 (Rajasthan)
- 9. The Chairman**
Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House,
Shimla – 171 004 (Himachal Pradesh)

- 10. The Managing Director
Ajmer Vidyut Vitaran Nigam Ltd.**
Old Power House,
Hatthi Bhatta, Jaipur Road,
Ajmer – 305 001 (Rajasthan)
- 11. Chief Engineer & Secretary
Engineering Deptt.**
1st Floor, UT Secretariat,
Sector 9-D,
Chandigarh – 160 009.
- 12. The Principal Secretary
Power Development Department**
New Secretariat,
Srinagar (J&K)
- 13. Central Electricity Regulatory Commission**
CORE-3, 6th Floor,
SCOPE Complex,
Lodhi Road,
New Delhi – 110 003.

Counsel for the Appellant(s) : Mr. Sachin Datta, Advocate
Ms. Shaila Arora, Advocate
Ms. Lakshmi Ramamurthy

Counsel for the Respondent(s) : Mr. Pradeep Misra, Advocate
Mr. Daleep Kr. Dhayani, Adv.
Mr. Manoj Kr. Sharma, Adv.
Mr. Suraj Singh, Adv. for Resp.
Nos. 1, 2 & 4

Mr. B. Sreekumar, Asst. Chief
(Legal) and Mr. T. Rout, JC
(Legal) and Mr. S. Anand, Jt.
Chief (Engg.) for CERC

Mr. Dipak Bhattacharya, Adv.
Mr. Niraj Kumar, Adv. For
WBSEB
Mr. S. Mukherji, Resident
Director

Mr. R. B. Sharma, Adv. For
BSEB

J U D G M E N T

Justice Manju Goel, Judicial Member

The appeal is directed against the order dated 09.05.06 passed by the Central Electricity Regulatory Commission (the Commission for short) in petition No. 95 of 2005 whereby the Commission has determined the tariff in respect of CHAMERA-I Hydro-Electric Project for the period 01.04.2004 to 31.03.2009 under the CERC (Terms and Conditions of Tariff) Regulations 2004 and section 1(a) of the Electricity Act, 2003. The only issue pressed in the present appeal is depreciation for an asset called 'un-classified land'.

02) The facts leading to the present appeal are as under:

Vide the impugned order the Commission determined the tariff on the basis of various parameters as per the CERC Tariff Regulations 1999. One of the cost, recoverable through tariff, is depreciation. The appellant claims that there is some error in calculation on depreciation so far as it relates to 'land un-classified'.

The appellant submits that the Commission has erred in calculating the depreciable value of the capital cost, as in paragraph 33. The Commission has deducted the full amount of cost of land i.e.Rs.3,894.13 Lacs which includes free hold as well as ‘un-classified’ from the gross block as on 31.03.04. The appellant contends that the cost of ‘un-classified land’ amounting to Rs.2,308.01 Lacs as given in petition in Form 12 should not have been deducted for calculating depreciable value. The calculation of the Commission is as under:

<i>Capital cost for the purpose of Depreciation</i>	<i>203444.64</i>
<i>ACE + FERV + Assets not in use as on 1.4.2004</i>	<i>- 1433.20</i>
<i>Capital cost as on 1.4.2004</i>	<i>202011.44</i>
<i>Less : Land Cost</i>	<i>3894.13</i>
	<i>19817.31</i>
<i>90% of Capital Cost as above</i>	<i>178305.58</i>

03) The appellant has explained that ‘un-classified land’ is a land which is taken for use from State Government (without transfer of title) and expenses on relief and rehabilitation as also on creation of alternative facilities for land evacuees or in lieu of existing facilities coming under the submergence and where construction of such alternative facilities is a specific pre-condition for acquisition of land for the purpose of the project. The grievance of the appellant is that the commission while considering the question of depreciation for ‘un-classified land in the case of appellant’s power station CHAMERA-II, has deducted only the cost of free hold land from the

gross block and has allowed the 'un-classified land' for purpose of calculating depreciation.

04) It is contended by the appellant that the Commission cannot adopt a different approach on the same issue for two different power stations and having given depreciation on 'un-classified land' for the power station CHAMERA-II cannot deny the same benefit for the appellant's station at CHAMERA-I. The appellant filed a review petition, being No. 64 of 2006, but the same has been rejected by the Commission. Hence, the appeal.

05) The NHPC did not claim depreciation for 'un-classified land' in the earlier tariff filing for the years 2000-2004. It is contended by the learned counsel for the appellant that the Comptroller & Auditor General raised an issue in this regard which has led to the appellant seeking depreciation for the investment made on 'un-classified land'.

06) Before us the only ground pressed is that since the Commission has given depreciation on 'un-classified land' in the case of power station CHAMERA-II the appellant is entitled to the same relief in the case of power station CHAMERA-I. It further contended that the respondent No.1 who is a beneficiary of the two projects did not object to the depreciation being awarded for 'un-classified land' has accepted the order of the Commission in respect

of CHAMERA-II and therefore, cannot now object to the impugned order.

07) It is submitted that the respondent No.1 cannot be debarred from objecting to the appeal simply because it did not file an appeal against the previous order in respect of CHAMERA-II. We quite agree with the learned counsel for the appellant. Each order is a distinct order in respect of two distinct stations. Simply because the respondent No.1 did not object to the earlier order in respect of CHAMERA-II it cannot be debarred from opposing the appeal.

08) Admittedly, the appellant did not include the cost incurred on 'un-classified land' in its earlier tariff filings as being entitled to depreciation. When the appellant filed the review petition the ground taken by it was that on account of change in the accounting policy the expenditure incurred on 'un-classified land' has to be shown differently and has to be subjected to depreciation. The Commission then held that the change in accounting policy or accounting practice cannot change the value of the depreciable asset. The plea about change in accounting policy has not been reiterated before us.

09) Mr. Misra, advocate appearing for the respondent submits that on the appellant's own showing the cost on 'un-classified land' has been incurred as pre-condition for acquisition of land. The

measures for rehabilitation of evacuees and similar other steps are pre-conditions for acquisition of land which is required for establishing a Hydro power station. Accordingly the cost incurred for such 'un-classified land' goes into the cost of land. Mr. Misra submits that the appellant had rightly included the cost of such 'un-classified land' in the cost of land. Land does not depreciate and, therefore, the value of land is excluded from the gross block in order to determine the value of asset which gets depreciation. Since the appellant has incurred the expenditure of creation of facilities by way of 'un-classified land' as a pre-condition for acquisition of land such expenditure should rightly go in the value of land.

10) Mr. Misra further submits that the expenditure incurred on 'un-classified land' is not for the benefit of the beneficiary i.e. the purchaser of power and therefore, the purchaser of power should not be burdened with the cost of depreciation of the said asset. We find force in the submission of Mr. Misra.

11) There is yet another reason for not allowing depreciation on 'un-classified land'. The depreciation is the replacement value of an asset. The development carried out on land provided by the Government, without transfer of title, is a responsibility enjoined on the entrepreneur of a new power house in order to rehabilitate those who are uprooted on account of acquisition of land or for afforestation as per requirement of environment. Take for example

housing provided to the evacuees by the appellant. It is a one-time expenditure by the appellant. In case the houses depreciate or require replacement at the end of 35 years, the appellant is not liable to rebuild those houses. Hence, there is no rationale in claiming depreciation on 'un-classified land'.

12) In view of the above discussion we do not find any justification for claiming depreciation on 'un-classified land'. The appeal is accordingly dismissed.

13) Pronounced in open court on this day *23rd of December, 2009.*

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member

Reportable ✓ / Non-reportable